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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS WASHINGTON, DC 20510-6175

May 27, 2014

The Honorable Gina McCarthy Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20460

Dear Administrator McCarthy:

Over one year ago, on May 17, 2013, I, along with Senators Inhofe and Grassley, and Chairman Issa of the House Committee on Oversight and Government Reform, expressed concern over the Environmental Protection Agency's (EPA) apparent disparate treatment of different constituencies when granting or denying a fee waiver under the Freedom of Information Act (FOIA).1 According to documents reviewed by the Committees, EPA had readily granted FOIA fee waivers for liberal environmental groups-effectively subsidizing them-while denying fee waivers and making the FOIA process more difficult for states and conservative groups. 2 In the May 17, 2013, letter, we requested documents related to EPA's fee waiver process so that Congress could conduct its own independent evaluation.3 Over one year has passed and EPA has refused to produce a single document to Congress; this is deeply troubling.

It is my understanding that the EPA Office of Inspector General (OIG) is conducting a review of this matter, pursuant to then-Acting Administrator Bob Perciasepe's request.4 However, the OIG's review in no way abrogates Congress's right and responsibility to conduct its own separate investigation. By refusing to produce the requested documents, EPA has impeded Congressional oversight of its fee waiver process, which is wholly unacceptable.

Specifically, the Committees requested that EPA provide all FOIA fee waiver requests submitted to EPA and all response letters from EPA to FOIA fee waiver requestors, between January 21, 2009 and May 16, 2013, including all responses to appeals. The Committees also requested EPA provide Congress with all future fee waiver decision letters on a monthly basis. As these documents all involve conversations with third parties, there is no privilege that could

⁵ FOIA Fee Waiver Letter, supra note 1.

¹ Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. James Inhofe, Ranking Member, S. Subcomm. on Oversight, Comm. on Env't & Pub. Works, Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, to Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency (May 17, 2013) [hereinafter FOIA Fee Waiver Letter].

² Michael Bastasch, EPA makes information requests more difficult for conservatives, DAILY CALLER, May 14, $2013, \underline{\text{http://dailycaller.com/2013/05/14/epa-makes-information-requests-more-difficult-for-conservatives/.}$ ³ FOIA Fee Waiver Letter, supra note 1.

⁴ Letter from Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works (June 28, 2013).

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be associated with these documents. As such, there is no justification for withholding these documents from Congress or the public. Accordingly, one can only conclude EPA does not want to be fully transparent about its past and future fee waiver decisions. Since there is no basis to withhold these documents, and since the Agency has had over a year to be responsive to Congress, I request that the EPA immediately provide the documents to the Committees.

Thank you for your prompt attention to this matter. If you have any questions regarding this request, please contact Kristina Moore of the Senate Environment and Public Works Committee at (202) 224-6176.

Sincerely,

David Vitter Ranking Member

Committee on Environment and Public Works